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Counterclaimant CHEGG INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

NEWEGG INC., a Delaware
Corporation,

Plaintiff,

v.

CHEGG INC., a Delaware
Corporation; and DOES 1-10,
inclusive,

Defendant.

Case No. CV 10-1907-GHK (FFMx)

Assigned to Judge George H. King

**CORRECTED [PROPOSED]
ORDER FOR ENTRY OF
STIPULATED PROTECTIVE
ORDER**

Note Changes Made by the Court.

CHEGG INC., a Delaware
Corporation,

Counterclaimant,

v.

NEWEGG INC., a Delaware
Corporation,

Counter-defendant.

1 Pursuant to Federal Rule of Civil Procedure 26(c), the Court finds that there
2 is a need to protect the parties from disclosure of trade secrets or other confidential
3 research, development, or commercial information that would not be made
4 available to the parties in this action but for the special needs of this litigation.
5 Therefore, in order to expedite the flow of discovery material, facilitate prompt
6 resolution of disputes over confidentiality, adequately protect material entitled to be
7 kept confidential, and ensure that protection is afforded only to material so entitled,
8 pursuant to the Court's authority and with the consent of the parties,

9 IT IS HEREBY ORDERED THAT:

10 **1. DEFINITIONS**

11 (a) "Party" means any of the parties to this action, including officers
12 and directors of such parties.

13 (b) "Counsel" means counsel of record for any Party, any Party's
14 in-house counsel, and those attorneys' staff, or outside vendors (such as copy
15 services, trial graphics providers, and jury consultants) whose duties and
16 responsibilities in the conduct of this action require access to Protected Material.

17 (c) "Discovery Material" means:

- 18 (i) any information, document, tangible thing, or response to
19 discovery requests pursuant to Fed. R. Civ. P. 26, 31, 33, 34 or 36;
20 (ii) any deposition testimony or transcript pursuant to Fed. R.
21 Civ. P. 30 or 31;
22 (iii) any document, thing, or premises made available for
23 inspection or produced to the Receiving Party pursuant to Fed. R. Civ. P. 26, 33, or
24 34;
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1 (iv) any document, thing, or premises made available for
 2 inspection or produced to the Receiving Party in response to a subpoena pursuant to
 3 Fed. R. Civ. P. 45; and

4 (v) any other document or information exchanged or
 5 disclosed formally or informally in this action.

6 (d) “Producing Party” means a party to this action, including all
 7 directors, employees, and agents (other than Counsel) of the party, or any third
 8 party that produces or otherwise makes Discovery Material available to a Receiving
 9 Party.

10 (e) “Receiving Party” means a party to this action, including all
 11 employees, agents, and directors (other than Counsel) of the party, that receives
 12 Discovery Material from a Producing Party.

13 (f) “CONFIDENTIAL” means any Discovery Material that the
 14 Producing Party reasonably believes embodies: (i) commercially sensitive,
 15 competitive, or other confidential business information; (ii) information invasive of
 16 an individual’s legitimate privacy interests; (iii) other sensitive material that the
 17 Producing Party does not customarily disclose to the public and that has not been
 18 made public; or (iv) third-party documents or information that the third party
 19 currently maintains as CONFIDENTIAL and is seeking to maintain as
 20 CONFIDENTIAL for purposes of this action.

21 (g) “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” means
 22 CONFIDENTIAL information that the Producing Party reasonably believes is so
 23 sensitive or confidential that in order to protect the reasonable interests of the
 24 Producing Party in maintaining the confidentiality of such information, the
 25 disclosure of such information must be limited to the persons to whom
 26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY information may be disclosed
 27 pursuant to this Protective Order. Such information may include, but is not limited
 28

1 to: (i) non-public sales, marketing, manufacturing, or customer-specific information
2 (bids, pricing, costs, delivery, and/or scheduling), product development strategies or
3 tactics, or strategy tactics being considered, discussed, or proposed;
4 (ii) manufacturing or other costs of doing business; (iii) product architecture or
5 designs, manufacturing processes, software products, or software for modeling,
6 simulating, testing, creating, or designing non-software products; (iv) the numeric
7 quantification of the Producing Party's sales, revenues, prices, expenses, profits,
8 earnings, or market shares; (v) product testing; (vi) current product or services
9 strategies; (vii) future product or services strategies; (viii) documents and/or oral
10 testimony disclosing any future, proposed, or hypothesized marketing, sales,
11 product development, or manufacturing tactic or strategy; (ix) pending patent
12 applications or patent disclosures for patents belonging to a Party; and (x) joint
13 development agreements, joint ventures, and strategic alliances.

14 (h) "Protected Material" means any Discovery Material that is
15 designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY in accordance with paragraphs 2(a) and 2(b) below, and any copies,
17 abstracts, summaries, or information derived from such Discovery Material, and
18 any notes or other records embodying or disclosing the contents of such Discovery
19 Material.

20 **2. DESIGNATION OF PROTECTED MATERIAL**

21 (a) Any Discovery Material produced or given in this action that is
22 asserted by the Producing Party to contain or constitute CONFIDENTIAL
23 information shall be so designated by the Producing Party. Each such Discovery
24 Material, including every page (where reasonable) of every document or transcript
25 and any electronic media containing CONFIDENTIAL information, shall be
26 marked on its face with the following legend:

27 **CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER**

1 If the Receiving Party intends to show non-CONFIDENTIAL portions of a
 2 document, transcript, or electronic media containing CONFIDENTIAL information
 3 to a person or Party not described below in paragraph 3(a), it shall first redact all
 4 pages designated CONFIDENTIAL.

5 (b) Any Discovery Material produced or given in this action that is
 6 asserted by the Producing Party to contain or constitute CONFIDENTIAL –
 7 ATTORNEYS’ EYES ONLY information shall be so designated by the Producing
 8 Party. Each such Discovery Material, including every page (where reasonable) of
 9 every document or transcript and any electronic media containing
 10 CONFIDENTIAL –ATTORNEYS’ EYES ONLY information, shall be marked on
 11 its face with the following legend:

12 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY**
 13 **SUBJECT TO PROTECTIVE ORDER**

14 If the Receiving Party intends to show non-CONFIDENTIAL –
 15 ATTORNEYS’ EYES ONLY portions of a document, transcript, or electronic
 16 media containing CONFIDENTIAL – ATTORNEYS’ EYES ONLY information to
 17 a person or Party not described below in paragraph 3(b), it shall first redact all
 18 pages designated CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

19 (c) All deposition testimony taken in this action will be deemed
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY for a period of thirty (30) days
 21 from receipt of the final transcript. Counsel for the Producing Party shall designate
 22 and mark which portions of the transcript should be designated CONFIDENTIAL –
 23 ATTORNEYS’ EYES ONLY, CONFIDENTIAL or non-CONFIDENTIAL by the
 24 end of the thirty (30) day period, subject to paragraph 6(f).

25 (d) When a Party produces files and records for inspection, no
 26 marking need be made by the Producing Party in advance of the inspection. For
 27 purposes of the initial inspection, all documents within the produced files shall be
 28 considered marked as CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

1 Thereafter, upon selection of specified documents for copying by the inspecting
2 Party, the Producing Party shall mark the copies of such documents, if necessary,
3 with the appropriate confidentiality marking at the time that the copies are produced
4 to the inspecting Party.

5 **3. ACCESS TO PROTECTED MATERIAL**

6 (a) Subject to paragraphs 3(d), 3(e) and 3(f), in the absence of an
7 order of the Court, any CONFIDENTIAL information produced in accordance with
8 the provisions of paragraph 2(a) above shall be used solely for purposes of the
9 prosecution and defense of this action and shall not be disclosed to or discussed
10 with any person other than: (i) Counsel for the Receiving Party; (ii) the Receiving
11 Party, if the Receiving Party is an individual, (iii) if the Receiving Party is not an
12 individual, employees of the Receiving Party or those hired by Receiving Party
13 whose review of such information the Receiving Party reasonably believes is
14 required for the conduct of this action; (iv) outside experts or consultants who are
15 engaged for the purpose of this action by the Receiving Party and such experts' or
16 consultants' staff, subject to paragraph 3(d); (v) the individual(s) who authored,
17 prepared, or received the information; (vi) certified court reporters taking
18 testimony involving such CONFIDENTIAL information; (vii) the Court (including
19 any trier of fact) in connection with the proceedings in this action.

20 (b) Subject to paragraphs 3(d), 3(e) and 3(f), in the absence of an
21 order of the Court, any CONFIDENTIAL – ATTORNEYS' EYES ONLY
22 information produced in accordance with the provisions of paragraph 2(b) above
23 shall be used solely for purposes of the prosecution and defense of this action and
24 shall not be disclosed to or discussed with any person other than: (i) Counsel for
25 the Receiving Party; (ii) outside experts or consultants who are engaged for the
26 purpose of this action by the Receiving Party and such experts' or consultants'
27 staff, subject to paragraph 3(d); (iii) the individual(s) who authored, prepared, or
28 received the information; (iv) certified court reporters taking testimony involving

1 such CONFIDENTIAL – ATTORNEYS’ EYES ONLY information and their
2 support personnel; and (v) the Court (including any trier of fact) in connection with
3 the proceedings in this action.

4 (c) Custody of Protected Material. All documents containing
5 information designated CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY and notes or other records regarding that information shall be
7 maintained in the custody of Counsel for the Parties, and no partial or complete
8 copies thereof containing Protected Material shall be retained by anyone else,
9 except that outside experts and consultants may retain documents on a temporary
10 basis for purposes of study, analysis, and preparation of the case. A person with
11 custody of Protected Material shall maintain it in a manner that limits access to
12 persons authorized pursuant to paragraph 3(a) or 3(b) to have access to Protected
13 Material.

14 (d) Outside Experts and Consultants. Subject to the provisions of
15 this Protective Order, all Protected Material may be disclosed to any outside expert
16 or consultant who has agreed to be bound by the terms of this Protective Order by
17 signing an Acknowledgement form attached as Exhibit A.

18 (e) Acknowledgment of Protective Order. Before obtaining access
19 to any Protected Material covered by this Protective Order, any person who is
20 authorized to have access to Protected Material pursuant to paragraph 3(a)(ii),
21 3(a)(iii), 3(a)(iv), or 3(b)(ii) of this Protective Order must have agreed in writing to
22 be bound by the terms of this Protective Order by signing an Acknowledgement
23 form attached as Exhibit A. All such signed Acknowledgment forms, except for
24 those Acknowledgment forms signed by outside experts and consultants pursuant to
25 paragraph 3(c), shall be given to the other Party at the final resolution of this matter.
26 Acknowledgment forms signed by outside experts and consultants pursuant to
27 paragraph 3(c) shall be kept by the Party in possession and must be furnished in the
28 event of a breach or challenge.

1 (f) Disclosure Pursuant to Consent. Protected Material also may be
2 disclosed to anyone so authorized by prior written consent of the designating Party
3 or non-Party, and no Party is restricted in any way by this Protective Order in
4 disclosing its own Protected Material.

5 (g) Disclosure of Confidential Transcripts to the Deponent.
6 Deposition transcripts containing Protected Material may be shown to the deponent
7 for the purpose of correction, but the deponent may not retain a copy of the
8 transcript unless (s)he has agreed in writing to be bound by the terms of this
9 Protective Order by signing an Acknowledgement form attached as Exhibit A.

10 (h) If a document designated as CONFIDENTIAL or
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY refers to the conduct or affairs of
12 a potential witness, the Parties' Counsel may discuss such conduct or affairs with
13 the witness, but must do so without revealing that such document exists, its author,
14 or its source, unless the witness is otherwise authorized under this Protective Order
15 to have access to such document.

16 (i) The limitations on disclosure contained in this Protective Order
17 shall not apply to documents or information that (i) Receiving Party can prove were
18 in the possession of the Receiving Party before disclosure by the Producing Party
19 without a restriction from any Party to this action; or (ii) are or become published or
20 available in a manner that is not in violation of this Protective Order.

21 **4. DISCLOSURE TO EXPERTS OR CONSULTANTS**

22 In addition to the foregoing, at least five business days prior to making the
23 first disclosure of Protected Material to any expert or consultant, the Party making
24 such disclosure shall provide the Producing Party with a copy of the
25 Acknowledgment form signed by the individual and provide written notice:

- 26 (a) Disclosing the identity of the expert or consultant;
27 (b) Identifying the present employer of the expert or consultant; and
28 (c) Providing a resume or curriculum vitae, including the cases in

1 which he or she has testified as an expert at trial or by deposition in the preceding
2 four years.

3 The disclosure of information regarding consultants or experts under this
4 Order shall not constitute a waiver of attorney-work product or privilege, and shall
5 not replace or modify the procedures provided under Fed. R. Civ. Proc. 26(a)(2) or
6 this Court's Scheduling Order. Additionally, the Parties stipulate that experts and
7 consultants are not required to disclose or produce, and the Parties shall not conduct
8 discovery concerning or seek to introduce evidence of: (1) communications
9 between the Parties' counsel and experts, or (2) drafts of expert declarations or
10 reports.

11 Any Party may object to a disclosure to an expert or consultant within five
12 business days after receipt of the copy of the signed Acknowledgment form and
13 written notice set forth herein, by stating specifically in writing the reasons why the
14 Party believes such person should not receive the Protected Material.

15 In the event of an objection, no disclosure of Protected Material shall be
16 made to the expert or consultant for a period of eight business days following the
17 receipt of the objection. The Party objecting to the disclosure to the expert or
18 consultant and the Party wishing to disclose such Protected Material to the expert or
19 consultant shall make good faith efforts to resolve the dispute within five business
20 days following the receipt of the objection. If no such resolution is obtainable, the
21 objecting Party may move the Court, by motion, pursuant to Local Rule 37-1 of the
22 U.S. District Court for the Central District of California, for an order that disclosure
23 not be made to such expert or consultant or that the disclosure be made only upon
24 certain conditions. The moving Party shall have the burden of establishing that
25 good cause exists for such an order, and shall seek to have the matter heard at the
26 earliest possible date. If a notice of motion is not received within three business
27 days following the parties meet and confer, the Protected Material may be disclosed
28 to such expert or consultant for the purposes of and upon the conditions herein

1 stated. If such a motion is made, there shall be no disclosure to such expert or
2 consultant until the Court has ruled upon the motion, and then only in accordance
3 with the ruling so made.

4 **5. COURT PROCEDURES**

5 If a document containing CONFIDENTIAL or CONFIDENTIAL –
6 ATTORNEYS' EYES ONLY information is ~~filed~~ **submitted for filing (FFM)** with
7 the Court, it shall be ~~filed~~ **lodged along with an application for filing (FFM)**
8 under seal in compliance with Local Rule 79-5.1 of the U.S. District Court for the
9 Central District of California and Section V of General Order 08-02 of the Central
10 District of California (revised February 7, 2008).

11 Any papers containing Protected Material shall indicate clearly what portions
12 are designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES
13 ONLY. Upon request of the disclosing Party, the Court shall return the originals of
14 all CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY
15 documentation, provided that such request is made within thirty (30) days of the
16 final disposition of this case.

17 Nothing in this Protective Order shall be deemed to alter or otherwise amend
18 the Parties' obligation to follow the procedures set forth in Federal Rules of Civil
19 Procedure, the Local Rules of the U.S. District Court for the Central District of
20 California or any Order by this Court. To the extent there is any conflict between
21 the obligations set forth in this Protective Order – which the parties do not believe
22 is the case – the Federal Rules of Civil Procedure, the Local Rules of the U.S.
23 District Court for the Central District of California and any Order by this Court
24 shall control.

25 **6. HANDLING OF PROTECTED MATERIAL**

26 (a) Nothing herein shall restrict a person authorized to have access
27 pursuant to paragraph 3(a) or 3(b) from making working copies, abstracts, digests,
28 and/or analyses of Protected Information for use in connection with this action.

1 Such working copies, abstracts, digests, and analyses shall be deemed to have the
2 same level of protection as the original Protected Material under the terms of this
3 Protective Order. Further, nothing herein shall restrict an authorized recipient from
4 converting or translating such information into machine-readable form for
5 incorporation in a data retrieval system used in connection with this action,
6 provided that access to such information, in whatever form stored or reproduced,
7 shall be limited to authorized recipients.

8 (b) If a Party through inadvertence produces any CONFIDENTIAL
9 or CONFIDENTIAL – ATTORNEYS’ EYES ONLY document or thing without
10 labeling, marking, or otherwise designating it as such in accordance with the
11 provisions of this Protective Order, the Producing Party may give written notice to
12 the Receiving Party that the document or thing produced is deemed
13 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY and should
14 be treated as such in accordance with the provisions of this Protective Order. The
15 Receiving Party must treat such document or thing with the noticed level of
16 protection from the date such notice is received. Promptly upon providing such
17 notice to the Receiving Party, the Producing Party shall provide the Receiving Party
18 with another copy of the document or thing that bears the new confidentiality
19 designation under this Protective Order, at which time the Receiving Party shall
20 either destroy or return the originally produced document or thing to the Producing
21 Party at the option of the Producing Party. The Receiving Party’s disclosure, prior
22 to the receipt of notice from the Producing Party of a new designation, to persons
23 not authorized by paragraph 3(a) or 3(b) to have access to such information
24 pursuant to the subsequent designation shall not be deemed a violation of this
25 Protective Order. However, the Receiving Party shall make a good faith effort
26 promptly to retrieve such document or thing from such persons not authorized to
27 receive such information and to obtain agreement from the person to whom the
28 disclosure was made to be bound by this Protective Order. The Receiving Party

1 shall timely notify the Producing Party of the disclosure and the identity of the
2 person or entity to whom the disclosure was made.

3 (c) In accordance with Fed. R. Civ. Proc. 26(b)(5)(B), if a
4 Producing Party inadvertently produces a document that otherwise is not
5 discoverable for reasons of the attorney-client privilege or work product immunity
6 or both, such inadvertent production shall not constitute any waiver of attorney-
7 client privilege or work product immunity and all copies of such inadvertently
8 produced documents shall promptly be returned by the Receiving Party to the
9 Producing Party upon demand.

10 (d) A Party or present employee of a Party may be examined and
11 may testify concerning all CONFIDENTIAL and CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY information produced by that Party, provided that the
13 present employee of the Party is authorized by the Party to have access to the
14 CONFIDENTIAL and CONFIDENTIAL – ATTORNEYS' EYES ONLY
15 information produced by that Party.

16 (e) A former employee of a Party, a current or former consultant of
17 a Party, and non-Parties may be examined and may testify concerning any
18 document containing CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS'
19 EYES ONLY information of a Producing Party that clearly appears on its face or
20 from other documents or testimony to have been prepared by, received by, known
21 by, or communicated to the employee, consultant or non-Party.

22 (f) If no confidentiality designation of deposition testimony is made
23 at the time of the deposition, any transcript containing CONFIDENTIAL or
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY information shall be designated
25 as containing such information by no later than thirty (30) calendar days after the
26 date of such deposition. Otherwise, such transcript shall not be deemed Protected
27 Material.
28

7. PROCEDURE TO CHALLENGE DESIGNATIONS

This Protective Order shall not prevent any Party from moving the Court for an order that information designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY by a Producing Party is not, in fact, CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY information. Prior to so moving, the Party seeking to reclassify the information shall seek the Producing Party’s agreement. The Producing Party shall have ten (10) court days to respond to such request. In any motion, the Producing Party shall have the burden of establishing before the Court the need for classification as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

No Party shall be obligated to challenge the appropriateness of any confidentiality designation, or confidential information by another Party or person, and the failure to do so shall not constitute a waiver or otherwise preclude a challenge to the designation in another or subsequent matter or action.

8. NO PROBATIVE VALUE

This Protective Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any Party or person with respect to any Protected Material. The fact that information is marked with a confidentiality designation under the Protective Order shall not be deemed to be determinative of what a trier of fact may determine to be confidential or proprietary or a trade secret. The fact that any information is disclosed, used, or produced in any court proceeding in this action with a confidentiality designation shall not be offered in any action or proceeding before any court, agency, or tribunal as evidence of or concerning whether or not such information is admissible, confidential, or proprietary.

9. RIGHT TO FURTHER RELIEF

Nothing in this Protective Order shall abridge the right of any person to seek judicial modification or amendment of this Protective Order.

1 **10. RIGHT TO ASSERT OTHER OBJECTIONS**

2 This Protective Order shall not be construed as waiving any right to assert a
3 claim of privilege, relevance, or other grounds for not producing Discovery
4 Material.

5 **11. FINAL DISPOSITION**

6 Within ninety (90) calendar days after final termination of this action, each
7 Party shall assemble all documents and things furnished and designated by any
8 other Party or non-Party as containing CONFIDENTIAL or CONFIDENTIAL –
9 ATTORNEYS' EYES ONLY information, and all copies, summaries, and abstracts
10 thereof, and shall either (a) return the documents and things to the Producing Party,
11 or (b) destroy the documents and things; provided, however, that the attorneys of
12 record for each Party shall be entitled to retain all pleadings, motion papers, legal
13 memoranda, correspondence, work product, transcripts and exhibits thereto, and
14 attorney-client communications that include or are derived from Protected Material.
15 If a Party elects to destroy the documents, a Certificate of Destruction shall be
16 served on all attorneys of record within ninety (90) calendar days of final
17 termination of this action.

18 **12. SURVIVAL OF OBLIGATIONS**

19 The obligations created by this Protective Order shall survive the termination
20 of this action unless otherwise modified by the Court. The Court shall retain
21 jurisdiction, even after termination of this action, to enforce this Protective Order
22 and to make such amendments and modifications to this Protective Order as may be
23 appropriate.

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APPENDIX A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

Newegg Inc. v. Chegg Inc.;
Chegg Inc. v. Newegg Inc.

U.S. District Court for the Central District of California, Los Angeles Division
Civil Action No. CV 10-1907-GHK (FFMx)

I, _____, declare under penalty of perjury under the laws of the United States and the State of California that I have read and understand in its entirety the Protective Order in the above-referenced lawsuit, and agree to adhere and to be bound by its terms. I understand that any unauthorized disclosure of confidential information constitutes a violation of this Court's Protective Order, for which I may be held in contempt of court. I hereby submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcement of the Protective Order.

(Name)

Date: _____